

SENATE BILL 569

C5, C2, M3

0lr2136
CF 0lr2137

By: **Senators Middleton, Colburn, DeGrange, Garagiola, Kelley, Kramer, Lenett, and Madaleno**

Introduced and read first time: February 4, 2010

Assigned to: Finance and Education, Health, and Environmental Affairs

A BILL ENTITLED

1 AN ACT concerning

2 **Biomass and Biofuels – In-State Production Incentives**

3 FOR the purpose of altering certain provisions relating to net energy metering to allow
4 certain eligible customer–generators generating electricity from cellulosic
5 feedstock to recover certain accrued generation credit for certain electricity fed
6 back to the grid; requiring, on or after certain dates after a certain time and
7 certification that a certain number of gallons of in–State production level of
8 biodiesel is reached, a certain percentage of the total diesel sold by volume in
9 the State be biodiesel produced from feedstock grown in the United States;
10 requiring the Comptroller to adopt certain regulations; authorizing the use of
11 certain renewable diesel in place of biodiesel to satisfy up to a certain
12 percentage of the biodiesel content requirements of this Act; providing that
13 certain biodiesel content requirements apply only if the Comptroller, in
14 consultation with the Department of Transportation and other applicable
15 agencies, makes a certain determination; prohibiting a person from selling or
16 offering for sale gasoline in the State more than a certain period after the
17 in–State production level of cellulosic biofuel reaches a certain level unless the
18 gasoline contains a certain percentage of cellulosic biofuel by volume;
19 authorizing the use of certain renewable fuel in place of cellulosic biofuel to
20 satisfy the cellulosic biofuel content requirements of this Act; providing that the
21 Comptroller, in consultation with the Department of Agriculture and the
22 Department of Transportation, shall suspend or reduce the biodiesel and
23 cellulosic biofuel content requirements under certain circumstances; requiring
24 the Comptroller, after consulting with the Department of Agriculture and the
25 Department of Transportation, to report to the General Assembly on certain
26 matters on or before a certain date each year; requiring the Department of
27 Agriculture, in consultation with certain agencies, to develop a plan for
28 infrastructure development that will support certain requirements once the
29 State reaches applicable production levels; requiring the Department of
30 Agriculture to report on the plan, findings, and recommendations to the

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Governor and the General Assembly on or before a certain date; providing for
 2 the application of certain provisions of this Act; defining certain terms; making
 3 stylistic changes; and generally relating to net energy metering and motor fuel.

4 BY repealing and reenacting, with amendments,
 5 Article – Public Utility Companies
 6 Section 7–306
 7 Annotated Code of Maryland
 8 (2008 Replacement Volume and 2009 Supplement)

9 BY repealing and reenacting, without amendments,
 10 Article – Business Regulation
 11 Section 10–101(d), (e), (f), and (l)
 12 Annotated Code of Maryland
 13 (2004 Replacement Volume and 2009 Supplement)

14 BY adding to
 15 Article – Business Regulation
 16 Section 10–304.2
 17 Annotated Code of Maryland
 18 (2004 Replacement Volume and 2009 Supplement)

19 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
 20 MARYLAND, That the Laws of Maryland read as follows:

21 **Article – Public Utility Companies**

22 7–306.

23 (a) (1) In this section the following words have the meanings indicated.

24 (2) “Biomass” means [“qualified] **“QUALIFYING biomass”** as defined in
 25 § 7–701 of this title.

26 (3) **“CELLULOSIC FEEDSTOCK” MEANS PLANT MATTER OR**
 27 **MATERIAL COMPOSED OF CELLULOSE, HEMICELLULOSE, OR LIGNIN THAT IS**
 28 **AVAILABLE ON A RENEWABLE OR RECURRING BASIS, INCLUDING:**

29 (I) **AGRICULTURE WASTES, SUCH AS CORN STOVER, STRAW,**
 30 **SEED HULLS, SORGHUM BAGASSE, AND NUTSHELLS;**

31 (II) **HIGH-YIELDING ENERGY CROPS, SUCH AS POPLARS,**
 32 **WILLOWS, SWITCHGRASS, ALFALFA, AND ALGAE;**

33 (III) **WOOD MATERIALS, SUCH AS WOOD OR BARK, SAWDUST,**
 34 **TIMBER SLASH, AND MILL SCRAP; AND**

1 (IV) WASTE MATERIAL, INCLUDING MUNICIPAL WASTE, SUCH
2 AS YARD CLIPPINGS.

3 [(3)] (4) “Eligible customer–generator” means a customer that owns
4 and operates, leases and operates, or contracts with a third party that owns and
5 operates a biomass, micro combined heat and power, solar, or wind electric generating
6 facility that:

7 (i) is located on the customer’s premises or contiguous property;

8 (ii) is interconnected and operated in parallel with an electric
9 company’s transmission and distribution facilities; and

10 (iii) is intended primarily to offset all or part of the customer’s
11 own electricity requirements.

12 [(4)] (5) “Micro combined heat and power” means the simultaneous
13 or sequential production of useful thermal energy and electrical or mechanical power
14 not exceeding 30 kilowatts.

15 [(5)] (6) “Net energy metering” means measurement of the difference
16 between the electricity that is supplied by an electric company and the electricity that
17 is generated by an eligible customer–generator and fed back to the electric company
18 over the eligible customer–generator’s billing period.

19 (b) The General Assembly finds and declares that a program to provide net
20 energy metering for eligible customer–generators is a means to encourage private
21 investment in renewable energy resources, stimulate in–State economic growth,
22 enhance continued diversification of the State’s energy resource mix, and reduce costs
23 of interconnection and administration.

24 (c) An electric company serving an eligible customer–generator shall ensure
25 that the meter installed for net energy metering is capable of measuring the flow of
26 electricity in two directions.

27 (d) The Commission shall require electric utilities to develop a standard
28 contract or tariff for net energy metering and make it available to eligible
29 customer–generators on a first–come, first–served basis until the rated generating
30 capacity owned and operated by eligible customer–generators in the State reaches
31 1,500 megawatts.

32 (e) (1) Except as provided in subsection (g) of this section, a net energy
33 metering contract or tariff shall be identical, in energy rates, rate structure, and
34 monthly charges, to the contract or tariff that the customer would be assigned if the
35 customer were not an eligible customer–generator.

1 (2) (i) A net energy metering contract or tariff may not include
2 charges that would raise the eligible customer-generator's minimum monthly charge
3 above that of customers of the rate class to which the eligible customer-generator
4 would otherwise be assigned.

5 (ii) Charges prohibited by this paragraph include new or
6 additional demand charges, standby charges, customer charges, and minimum
7 monthly charges.

8 (f) (1) The electric company shall calculate net energy metering in
9 accordance with this subsection.

10 (2) Net energy produced or consumed on a monthly basis shall be
11 measured in accordance with standard metering practices.

12 (3) If electricity supplied by the grid exceeds electricity generated by
13 the eligible customer-generator during a month, the eligible customer-generator shall
14 be billed for the net energy supplied in accordance with subsection (e) of this section.

15 (4) If electricity generated by the eligible customer-generator exceeds
16 the electricity supplied by the grid, the eligible customer-generator shall be required
17 to pay only customer charges for that month in accordance with subsection (e) of this
18 section.

19 (5) (i) An eligible customer-generator under paragraph (4) of this
20 subsection may accrue generation credit for a period not to exceed 12 months.

21 (ii) The electric company shall carry forward a negative
22 kilowatt-hour reading until:

23 1. the eligible customer-generator's consumption of
24 electricity from the grid eliminates the credit; or

25 2. the 12-month accrual period under subparagraph (i)
26 of this paragraph expires.

27 (6) [~~Any~~] **EXCEPT AS PROVIDED IN PARAGRAPH (7) OF THIS**
28 **SUBSECTION, ANY** remaining accrued generation credit at the expiration of the
29 12-month accrual period under paragraph (5)(i)2 of this subsection:

30 (i) shall revert to the electric company; and

31 (ii) may not be recovered by the eligible customer-generator.

32 **(7) (I) THIS PARAGRAPH APPLIES TO ELIGIBLE**
33 **CUSTOMER-GENERATORS THAT GENERATE ELECTRICITY FROM CELLULOSIC**
34 **FEEDSTOCK GROWN ON THE CUSTOMER'S PREMISES.**

1 **(II) ANY REMAINING ACCRUED GENERATION CREDIT AT**
2 **THE EXPIRATION OF THE 12-MONTH ACCRUAL PERIOD UNDER PARAGRAPH**
3 **(5)(II)2 OF THIS SUBSECTION:**

4 **1. MAY NOT REVERT TO THE ELECTRIC COMPANY;**
5 **AND**

6 **2. MAY BE RECOVERED BY THE ELIGIBLE**
7 **CUSTOMER-GENERATOR.**

8 (g) (1) For an eligible customer-generator whose facility is sized to
9 produce energy in excess of the eligible customer-generator's annual energy
10 consumption, the Commission:

11 (i) may require the eligible customer-generator to install a dual
12 meter that is capable of measuring the flow of electricity in two directions; and

13 (ii) shall develop a credit formula that:

14 1. excludes recovery of transmission and distribution
15 costs; and

16 2. provides that the credit may be calculated using a
17 method other than a kilowatt-hour basis, including a method that allows a
18 dollar-for-dollar offset of electricity supplied by the grid compared to electricity
19 generated by the eligible customer-generator.

20 (2) In determining whether to require an eligible customer-generator
21 to install a dual meter under paragraph (1)(i) of this subsection, the Commission shall
22 consider the generating capacity of the eligible customer-generator.

23 (h) (1) The generating capacity of an electric generating system used by
24 an eligible customer-generator for net metering may not exceed 2 megawatts.

25 (2) An electric generating system used by an eligible
26 customer-generator for net metering shall meet all applicable safety and performance
27 standards established by the National Electrical Code, the Institute of Electrical and
28 Electronics Engineers, and Underwriters Laboratories.

29 (3) The Commission may adopt by regulation additional control and
30 testing requirements for eligible customer-generators that the Commission
31 determines are necessary to protect public safety and system reliability.

32 (4) An electric company may not require an eligible
33 customer-generator whose electric generating system meets the standards of
34 paragraphs (2) and (3) of this subsection to:

- 1 (i) install additional controls;
- 2 (ii) perform or pay for additional tests; or
- 3 (iii) purchase additional liability insurance.

4 (5) An eligible customer-generator shall own and have title to all
 5 renewable energy attributes or renewable energy credits associated with any
 6 electricity produced by its electric generating system.

7 (i) On or before February 1 of each year, the Commission shall report to the
 8 General Assembly, in accordance with § 2-1246 of the State Government Article, on
 9 the status of the net metering program under this section, including:

10 (1) the amount of capacity of electric generating facilities owned and
 11 operated by eligible customer-generators in the State by type of energy resource;

12 (2) based on the need to encourage a diversification of the State's
 13 energy resource mix to ensure reliability, whether the rated generating capacity limit
 14 in subsection (d) of this section should be altered; and

15 (3) other pertinent information.

16 **Article – Business Regulation**

17 10-101.

18 (d) (1) “Gasoline” means a product that:

19 (i) is used as fuel in a spark ignited, internal combustion
 20 engine; or

21 (ii) is designated as gasoline by the Comptroller.

22 (2) “Gasoline” includes:

23 (i) casing head gasoline;

24 (ii) absorption gasoline;

25 (iii) other natural gasoline; and

26 (iv) aviation gasoline, as defined in § 9-101(c) of the
 27 Tax – General Article.

28 (e) “Motor fuel” means:

1 (1) gasoline; or

2 (2) special fuel.

3 (f) “Motor vehicle” means a vehicle that:

4 (1) is self-propelled;

5 (2) is designed to be operated on a public highway; and

6 (3) is not operated only on rails.

7 (l) (1) “Special fuel” means a product that is usable as fuel in an internal
8 combustion engine.

9 (2) “Special fuel” does not include gasoline.

10 **10-304.2.**

11 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE
12 MEANINGS INDICATED.

13 (2) “BIODIESEL” MEANS A FUEL DERIVED FROM A RENEWABLE
14 SOURCE AND COMPOSED OF MONO-ALKYL ESTERS OF LONG CHAIN FATTY ACIDS
15 DERIVED FROM VEGETABLE OILS OR ANIMAL FATS THAT MEETS THE
16 REQUIREMENTS OF ASTM D 6751 AND ITS SUCCESSORS AND THAT IS
17 MANUFACTURED BY AN ENTITY CERTIFIED BY THE BQ-9000 NATIONAL
18 BIODIESEL ACCREDITATION PROGRAM.

19 (3) “CELLULOSIC BIOFUEL” HAS THE MEANING STATED IN
20 § 211(O)(1)(E) OF THE CLEAN AIR ACT (42 U.S.C. § 7545(O)(1)(E)).

21 (4) (I) “IN-STATE PRODUCTION LEVEL” MEANS THE
22 ANNUALIZED VOLUME OF IN-STATE PRODUCTION OF BIODIESEL OR
23 CELLULOSIC BIOFUEL OVER ANY 3-MONTH PERIOD, AS CERTIFIED BY THE
24 DEPARTMENT OF AGRICULTURE.

25 (II) CERTIFICATION BY THE DEPARTMENT OF
26 AGRICULTURE UNDER THIS PARAGRAPH SHALL BE PUBLISHED IN THE
27 MARYLAND REGISTER.

28 (5) “RENEWABLE DIESEL” MEANS A DIESEL FUEL SUBSTITUTE
29 THAT:

30 (I) IS DERIVED FROM NONPETROLEUM RENEWABLE
31 RESOURCES;

1 (II) IS PRODUCED FROM BIOLOGICAL SOURCES OF OILS;

2 (III) HAS AN EMISSIONS PROFILE AT LEAST AS
3 ENVIRONMENTALLY PROTECTIVE AS THE BIODIESEL THAT IT REPLACES;

4 (IV) IS SUITABLE FOR USE AS A FUEL;

5 (V) WHEN INTENDED FOR USE IN MOTOR VEHICLES, IS
6 REGISTERED UNDER 40 C.F.R. PART 79 AS A MOTOR VEHICLE FUEL OR FUEL
7 ADDITIVE;

8 (VI) WHEN INTENDED FOR USE IN NONMOTOR VEHICLE
9 APPLICATIONS, IS PROPERLY REGISTERED AS REQUIRED UNDER APPLICABLE
10 FEDERAL OR STATE LAW; AND

11 (VII) MEETS OTHER STANDARDS ADOPTED BY THE
12 COMPTROLLER.

13 (6) "RENEWABLE FUEL" MEANS A GASOLINE SUBSTITUTE OTHER
14 THAN CELLULOSIC BIOFUEL THAT:

15 (I) IS DERIVED FROM NONPETROLEUM RENEWABLE
16 RESOURCES;

17 (II) IS REGISTERED UNDER 40 C.F.R. PART 79 AS A MOTOR
18 VEHICLE FUEL OR FUEL ADDITIVE;

19 (III) IS SUITABLE FOR USE IN GASOLINE ENGINES;

20 (IV) HAS AN EMISSIONS PROFILE AT LEAST AS
21 ENVIRONMENTALLY PROTECTIVE AS THE CELLULOSIC BIOFUEL THAT IT
22 REPLACES; AND

23 (V) MEETS OTHER STANDARDS ADOPTED BY THE
24 COMPTROLLER.

25 (B) (1) EXCEPT AS PROVIDED IN PARAGRAPHS (2) AND (3) OF THIS
26 SUBSECTION, ON OR AFTER THE DATES SET BY THE COMPTROLLER BY
27 REGULATION THAT ARE MORE THAN 1 YEAR AFTER THE DEPARTMENT OF
28 AGRICULTURE CERTIFIES THAT THE IN-STATE PRODUCTION LEVEL OF
29 BIODIESEL EQUALS AT LEAST:

1 (I) 12,000,000 GALLONS, 2% OF THE TOTAL DIESEL SOLD
2 BY VOLUME IN THE STATE MUST BE BIODIESEL PRODUCED FROM FEEDSTOCK
3 GROWN IN THE UNITED STATES;

4 (II) 30,000,000 GALLONS, 5% OF THE TOTAL DIESEL SOLD
5 BY VOLUME IN THE STATE MUST BE BIODIESEL PRODUCED FROM FEEDSTOCK
6 GROWN IN THE UNITED STATES;

7 (III) 55,000,000 GALLONS, 10% OF THE TOTAL DIESEL SOLD
8 BY VOLUME IN THE STATE MUST BE BIODIESEL PRODUCED FROM FEEDSTOCK
9 GROWN IN THE UNITED STATES; AND

10 (IV) 110,000,000 GALLONS, 20% OF THE TOTAL DIESEL SOLD
11 BY VOLUME IN THE STATE MUST BE BIODIESEL PRODUCED FROM FEEDSTOCK
12 GROWN IN THE UNITED STATES.

13 (2) RENEWABLE DIESEL PRODUCED IN THE STATE MAY BE USED
14 IN PLACE OF BIODIESEL TO SATISFY UP TO 25% OF THE BIODIESEL CONTENT
15 REQUIREMENTS UNDER PARAGRAPH (1) OF THIS SUBSECTION.

16 (3) (I) THE BIODIESEL CONTENT REQUIREMENTS UNDER
17 PARAGRAPH (1)(III) AND (IV) OF THIS SUBSECTION SHALL APPLY ONLY IF THE
18 COMPTROLLER, IN CONSULTATION WITH THE DEPARTMENT OF
19 TRANSPORTATION AND OTHER APPLICABLE AGENCIES, DETERMINES THAT
20 MANUFACTURER WARRANTIES WILL NOT BE VOIDED DUE TO THE USE OF
21 BIODIESEL BLENDS AT THE REQUIRED PERCENTAGES.

22 (II) THE COMPTROLLER SHALL PUBLISH NOTICE OF ITS
23 DETERMINATION UNDER THIS PARAGRAPH IN THE MARYLAND REGISTER.

24 (4) THE COMPTROLLER SHALL ADOPT REGULATIONS THAT
25 SPECIFY THE DATES AND THE MANNER IN WHICH THE BIODIESEL CONTENT
26 REQUIREMENTS UNDER PARAGRAPH (1) OF THIS SUBSECTION ARE TO BE MET.

27 (C) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS
28 SUBSECTION, A PERSON MAY NOT SELL OR OFFER FOR SALE GASOLINE IN THE
29 STATE MORE THAN 1 YEAR AFTER THE DEPARTMENT OF AGRICULTURE
30 CERTIFIES THAT THE IN-STATE PRODUCTION LEVEL OF CELLULOSIC BIOFUEL
31 HAS REACHED 100,000,000 GALLONS UNLESS THE GASOLINE CONTAINS AT
32 LEAST 5% CELLULOSIC BIOFUEL BY VOLUME.

33 (2) RENEWABLE FUEL PRODUCED IN THE STATE MAY BE USED IN
34 PLACE OF CELLULOSIC BIOFUEL TO SATISFY UP TO 25% OF THE REQUIREMENTS
35 OF THIS SUBSECTION.

1 **(D) THE COMPTROLLER, IN CONSULTATION WITH THE DEPARTMENT**
2 **OF AGRICULTURE AND THE DEPARTMENT OF TRANSPORTATION, SHALL**
3 **SUSPEND OR REDUCE THE CONTENT REQUIREMENTS OF SUBSECTIONS (B) AND**
4 **(C) OF THIS SECTION IF THE CONTENT REQUIREMENTS:**

5 **(1) WOULD PLACE RETAILERS AT A COMPETITIVE DISADVANTAGE**
6 **OR CAUSE ECONOMIC HARDSHIP TO CONSUMERS; OR**

7 **(2) CANNOT BE MET:**

8 **(I) AS A RESULT OF INSUFFICIENT SUPPLIES OF BIODIESEL**
9 **OR CELLULOSIC BIOFUEL; OR**

10 **(II) BECAUSE THE NECESSARY INFRASTRUCTURE,**
11 **INCLUDING DISTRIBUTION SYSTEMS FOR BIODIESEL AND CELLULOSIC BIOFUEL,**
12 **DOES NOT EXIST.**

13 **(E) ON OR BEFORE JANUARY 1 OF EACH YEAR, THE COMPTROLLER,**
14 **AFTER CONSULTING WITH THE DEPARTMENT OF AGRICULTURE AND THE**
15 **DEPARTMENT OF TRANSPORTATION, SHALL REPORT TO THE GENERAL**
16 **ASSEMBLY, IN ACCORDANCE WITH § 2-1246 OF THE STATE GOVERNMENT**
17 **ARTICLE, ON THE STATUS OF THE STATE'S BIODIESEL AND CELLULOSIC**
18 **BIOFUEL INDUSTRIES AND THE IMPLEMENTATION OF THIS SECTION,**
19 **INCLUDING:**

20 **(1) THE ECONOMIC IMPACT OF THE BIODIESEL AND CELLULOSIC**
21 **BIOFUEL CONTENT REQUIREMENTS;**

22 **(2) THE INCIDENCE OF PERFORMANCE-RELATED ISSUES THAT**
23 **MAY HAVE ARISEN DUE TO COLD WEATHER OR BIOFUEL QUALITY;**

24 **(3) THE NAMES AND LOCATIONS OF BIODIESEL AND CELLULOSIC**
25 **BIOFUEL PRODUCTION FACILITIES IN THE STATE; AND**

26 **(4) THE LEVEL OF IN-STATE PRODUCTION OF BIODIESEL AND**
27 **CELLULOSIC BIOFUEL.**

28 SECTION 2. AND BE IT FURTHER ENACTED, That:

29 (a) (1) The Department of Agriculture, in consultation with the
30 Comptroller, the Maryland Energy Administration, the Chesapeake Bay Commission,
31 the Department of Transportation, and the Department of Business and Economic
32 Development, shall develop a plan that includes findings and recommendations for
33 infrastructure development that will support the requirements under § 10-304.2(b)

1 and (c) of the Business Regulation Article, as enacted by Section 1 of this Act, once the
2 State reaches applicable production levels.

3 (2) The plan shall include all aspects of the biofuel supply chain
4 infrastructure, including:

5 (i) Feedstock production: sustainably produced supplies of
6 biofuel feedstocks;

7 (ii) Feedstock logistics: equipment, labor force, harvesting,
8 collection, storage, pre-processing, and transportation operations;

9 (iii) Biofuels production: refining, conversion operations,
10 transportation operations, and storage;

11 (iv) Biofuels distribution: transportation, storage, blending, and
12 dispensing operations; and

13 (v) Biofuels end use infrastructure: storage, retail pump
14 retrofits and upgrades, marketing, consumer demand, compatible vehicles with higher
15 blends of biofuels, and manufacturer warranties.

16 (3) The plan shall include a list of available State and federal funds
17 that may be available for supply chain infrastructure needs through various State or
18 federal programs with the intent to minimize supply chain construction costs and costs
19 of the fuel product. The list should, at a minimum, include:

20 (i) Grants;

21 (ii) Loans, loan guarantees, and leases;

22 (iii) Tax incentives;

23 (iv) Rebates;

24 (v) Fuel discounts;

25 (vi) Technical assistance; and

26 (vii) Funds made available through the federal American
27 Recovery and Reinvestment Act of 2009 or similar legislation.

28 (4) The plan shall include comprehensive and proactive
29 recommendations to ensure public health, safety, and environmental sustainability
30 and natural resource protection, including:

31 (i) Types of feedstocks used;

- 1 (ii) Location of feedstocks grown;
- 2 (iii) Removal guidelines for agricultural and forestry cellulosic
3 feedstocks; and
- 4 (iv) Best management practices needed for sustainable feedstock
5 production.

6 (b) On or before January 1, 2011, the Department of Agriculture shall report
7 to the Governor and, in accordance with § 2-1246 of the State Government Article, the
8 General Assembly on its plan, findings, and recommendations.

9 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
10 October 1, 2010.